GLOW INTERNATIONAL MALAYSIA SDN BHD
v. GOVERNMENT OF MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD SHAHRIR MOHD SALLEH J
[ORIGINATING SUMMONS NO: WA-24NCVC-3927-09-2023]
6 SEPTEMBER 2024

Abstract – *(i) In challenging a decision of a public authority as void and illegal, which was a decision made in pursuance of provisions of a statute, the correct procedures to be followed are the procedures under O. 53 of the Rules of Court 2012, ie, by applying for a judicial review for an order of certiorari to quash the said decision; (ii) Ministries may not be sued in a civil action as they are not legal entities known in law. Therefore, a party in a civil action, may only sue the Federal Government or the Ministers in charge of the relevant Ministries.*

CIVIL PROCEDURE: *Striking out – Application for – Application to strike out originating summons ('OS') filed for declaratory orders to challenge decision of public authority made pursuant to provisions of, among others, Private Healthcare Facilities and Services Act 1998 as void and illegal – OS filed during pendency of judicial review application filed for similar relief – Whether abuse of process of court – Whether amounted to duplicity of proceedings – Whether decision of public authority could be challenged by filing of OS instead of filing for judicial review under O. 53 of Rules of Court 2012 – Whether Ministries could be sued in civil action – Rules of Court 2012, O. 18 r. 19(1)(d)*

The plaintiff was a company established to carry out the business of providing beauty treatment services. The services provided were facial treatment by means of aesthetic laser procedures, which were of the non-invasive type. Since 2014, the plaintiff was allowed to operate its business by the seventh defendant, Ministry of Domestic Trade and Cost of Living. Hence, the plaintiff had set up its operation outlets in several shopping complexes, *ie*, Suria KLCC, Mid Valley Megamall and SOGO. However, on the end of December 2022 until early January 2023, officers of the sixth defendant, Director of Private Medical Practice Control Section (CKAPS), visited the said operation outlets to carry out inspections. Pursuant to the inspections, a letter dated 13 January 2023 ('letter') was sent to the plaintiff by the fifth defendant, State Deputy Director of Health (Medical) Wilayah Persekutuan Kuala Lumpur and Putrajaya Health Departments. In that letter, the fifth defendant ordered the plaintiff to cease operations in the operation outlets immediately. According to the fifth defendant, the beauty treatment services provided in the operation outlets could only be carried out by a

registered medical facility or a medical facility which was licensed by the second defendant, Ministry of Health, and such facility must be operated by a qualified and registered medical practitioner, who has in his or her possession a valid annual practising certificate and a letter of credentialing and privileging. Failure to comply with the said instructions would cause enforcement actions pursuant to the Private Healthcare Facilities and Services Act 1998 ('Act') to be imposed upon the plaintiff ('impugned decision'). Aggrieved, the plaintiff filed a judicial review application at the High Court ('High Court') to challenge the impugned decision ('judicial review application'). During the pendency of the judicial review application, the plaintiff commenced another application, but this time in this court, and *via* an originating summons, to seek declaratory orders, chiefly, for declaration that the impugned decision was void and illegal ('OS'). This prompted the defendants to file an application under O. 18 r. 19(1)(d) of the Rules of Court 2012 ('ROC') to strike out the OS on the ground that it was an abuse of process of the court ('striking out application'). In support of the application, the defendants took the stance that: (i) by filing the OS, the plaintiff was effectively seeking to challenge the exercise of Executive powers of the fifth defendant. The plaintiff should have filed a judicial review application under O. 53 of the ROC instead of the OS; (ii) since there was the judicial review application pending before the High Court, the OS tantamount to a duplicity of proceedings; and (iii) the second and seventh defendants, being Ministries, were not legal entities. The issues that arose in the striking out application were therefore: (i) whether the OS was an abuse of process of the court; and (ii) whether civil action may be brought against the said Ministries.

Held (allowing striking out application):

(1) In the OS, the plaintiff was essentially seeking to challenge the impugned decision as void and illegal. The relief sought was in the nature of a judicial review. If the OS was allowed, (i) the impugned decision would be declared void and illegal; (ii) the plaintiff would not be subjected to the order of the fifth defendant as stated in the letter; (iii) the plaintiff would be able to rely on the earlier approval granted by the seventh defendant to continue providing beauty treatment services; and (iv) there would not be any further necessity for the plaintiff to get from this court a declaration for it to be allowed to continue its business operations. Moreover, it was clear that the relief for a declaration that the plaintiff's business was not subject to the jurisdiction of the second defendant was inextricably connected with the impugned decision. It was not the kind of declaration which could be applied for nor granted independently of the impugned decision. There would be no basis for such a declaration to be applied if not for the impugned decision. Based on these analyses, it was perfectly clear that the substance of the OS was indeed a challenge

against the impugned decision, which was a decision made by the fifth defendant, a public authority, in the performance of a public duty pursuant to, among others, the Act. As such, it was incumbent on the plaintiff to resort to the specific procedures for prerogative writs in the form of an order of *certiorari* to quash the impugned decision under O. 53 of the ROC, but not by the means of the OS. That was an abuse of process of the court. Other than that, the plaintiff, in maintaining the OS while the judicial review application before the High Court was still pending, was clearly maintaining actions in duplicity of one another. (paras 19-24)

(2) The plaintiff had included the second and seventh defendants as parties in the OS. The plaintiff suggested that it was perfectly acceptable to sue the Ministries because this similarly had been done in several other cases. This conception was highly erroneous. Firstly, just because this was done in other cases before, that did not clothe it with any legal justification. Secondly, being Ministries of the Federal Government, the second and seventh defendants were not legal entities known in law. The relevant Minister charged with the responsibility for the particular Ministry and the officers of the Ministry concerned may be sued, but not the Ministry itself. Unlike the ministers who were charged with the responsibility for the relevant Ministries themselves, the Ministry has no legal entity of its own. (paras 26 & 27)

Case(s) referred to:

Abdul Latif Puteh & Ors v. Pentadbir Tanah Jajahan Pasir Mas & Anor [2023] 1 CLJ 161 FC ***(refd)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***

Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors [2012] 1 CLJ 75 CA ***(refd)***

Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals [2018] 9 CLJ 425 FC ***(refd)***

Vestime Corporation Sdn Bhd v. YBLE Resources Sdn Bhd & Ors [2006] 2 CLJ 196 HC ***(refd)***

Legislation referred to:

Government Proceedings Act 1956, ss. 16, 21(1)

Rules of Court 2012, O. 18 r. 19(1), O. 33 r. 3, O. 53

For the plaintiff - Chris Lim Su Heng, Sivanesan K Selvaratnam & Nur Khidmah Huzaisham; M/s Chris Lim Su Heng

For the defendants - Nur Idayu Amir; SFC

Reported by Syamim Ariffin

A

JUDGMENT
(encl. 8)

Ahmad Shahrir Mohd Salleh J:

Introduction

B **[1]** The fifth defendant rendered a decision against the plaintiff *vide* a letter dated 13 January 2023. The letter was addressed to one of the plaintiff's directors, namely Mr Lucas Sandral. The decision was in relation to an order for the plaintiff to immediately cease its business operations in relation to the provision of facial treatment services using aesthetic laser procedures C ("impugned decision"). According to the fifth defendant, the impugned decision was aligned with certain aesthetic medical practice guidelines. The impugned decision was made pursuant to the regulatory visits carried out by the sixth defendant at the plaintiff's business premises.

D **[2]** The impugned decision had affected and effectively prevented the plaintiff from continuing with its business operations. Feeling aggrieved, the plaintiff then filed the present originating summons for certain declaratory orders against the defendants. Chiefly, the plaintiff was seeking to have the impugned decision declared void and illegal.

E **[3]** The defendants applied under O. 18 r. 19(1) of the Rules of Court 2012 to strike out the originating summons. The defendants' application was premised on para. (d) on the grounds that the originating summons was an abuse of the process of the court.

[4] On a perusal of the originating summons and the affidavits filed for F and against the application and considering the positions of the respective parties as deliberated in the submissions, this court made a finding that the plaintiff's application was obviously unsustainable. Thus, the defendants' application in encl. [8] was allowed and the plaintiff's originating summons was accordingly struck out with RM5,000 cost. The plaintiff was not satisfied with the decision and appealed.

G

Brief Background Facts

[5] The plaintiff was established to carry on the business of providing beauty treatment services. Specifically, the plaintiff intended to provide facial treatment services by means of aesthetic laser procedures. The laser H treatment was of the non-invasive type. According to the plaintiff, the technology was approved by the Food and Drug Administration, USA (US FDA).

[6] For the purposes of its business operations, the plaintiff submitted an I application to the seventh defendant for facilitation. In the application, the plaintiff described the nature of the services to be provided. In the middle of November 2014, the seventh defendant granted the plaintiff its approval

to run the business subject to certain conditions. The approval was for the period of two years from the date of the letter. According to the letter, the plaintiff was granted approval to carry on the activity under the heading of "import of medical diagnostic preparation medical laboratories activities of consultants other than architecture, engineering and management consultants".

[7] With the approval, the plaintiff began its beauty treatment operations in several shopping malls in Kuala Lumpur and Selangor. The operation outlets carry the name and style of "Glo Laser Centre" ("Glo Centre"). However, towards the end of December 2022 and early January 2023 the plaintiff's Glo Centre at the Suria KLCC, Mid Valley Megamall and Sogo were visited and inspected by officers of the sixth defendant.

[8] Following the inspection, on 31 January 2023, the plaintiff received a letter dated 13 January 2023 from the fifth defendant. The letter was copied to the sixth defendant. By the letter, the fifth defendant ordered for the plaintiff's business operations, to cease with immediate effect. The letter referred to the inspection which was carried out the Glo Centres at the Suria KLCC, Mid Valley Megamall and Sogo shopping complexes. Based on the inspection, it was found that the beauty treatment provided by the plaintiff may only be carried out at a registered medical facility or a medical facility which is licensed by the Ministry of Health and operated by qualified and registered medical practitioners.

[9] The letter further prompted the plaintiff to ensure that the premises where the services were provided be properly registered as a private medical clinic with aesthetics as its area of interest if the plaintiff still wished to continue providing the same services. The plaintiff was also required to ensure that the services will be performed by medical officers who are in possession of valid annual practising certificates and letters of credentialing and privileging. This was in accordance with the Private Healthcare Facilities and Services Act 1998. Failure to comply with the instructions would result in enforcement actions under the same Act.

[10] The plaintiff was aggrieved by the impugned decision of the fifth defendant and filed for judicial review before the Special Powers Division of the Kuala Lumpur High Court to challenge it. At the material time, when the application was heard, the judicial review application was still pending. Subsequently, the plaintiff filed the present originating summons and prayed for the following reliefs:

(i) for a declaration that the plaintiff's business did not come within the purview of the Ministry of Health but it was within the purview of the Ministry of Domestic Trade and Cost of Living;

(ii) for a declaration that the impugned decision which was communicated to the plaintiff through the letter of 13 January 2023 was void and illegal;

(iii) for a declaration that the plaintiff and its business have been operating legally since its inception in 2014 within the purview of the Ministry of Domestic Trade and Cost of Living until the decision of the fifth defendant; and

(iv) for a declaration that the plaintiff be allowed to continue with its business operations.

[11] The defendant took the stance that the plaintiff's originating summons was an abuse of process and filed an application to strike it out. In crux, learned Senior Federal Counsel contended that in seeking for a declaration that the impugned decision was void and illegal, the plaintiff was effectively seeking to challenge the exercise of Executive powers. Such a challenge may only be done under the purview of O. 53 of the Rules of Court 2012 by means of judicial review proceedings and not by the current originating summons. Learned Senior Federal Counsel also argued that the present originating summons amounted to a duplicity of proceedings with that of the pending judicial review and that the second and seventh defendants were not legal entity.

Analysis And Findings

[12] The principles in respect of an application to striking out a claim are trite. The oft-quoted "obviously unsustainable" test in *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36; [1993] 1 MLRA 611; [1993] 2 AMR 1969, may be summarised as follows:

(i) that it is only in plain and obvious cases that recourse should be had to the summary process under the Rules;

(ii) that this summary procedure can only be adopted when it can be clearly seen that a claim or answer on the face of it is obviously unsustainable;

(iii) that it cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence;

(iv) that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O. 33 r. 3 of the Rules of Court; and

(v) that the court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defence raised are not arguable.

[13] In illustration, the Federal Court in *Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals* [2018] 9 CLJ 425; [2019] 1 MLJ 59; [2018] 6 MLRA 433; [2018] 6 AMR 529, by reference to the decisions in *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; [1997] 2 MLJ 565 and *Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors* [2012] 1 CLJ 75; [2012] 1 MLJ 473, explained the principles in the following parameters:

(i) whether there is an issue of law which requires lengthy argument and mature consideration;

(ii) whether there is an issue of fact that is capable of resolution only after taking *viva voce* evidence during trial,

(iii) the degree of unsustainability must appear on the face of the statement of claim without having to go into a lengthy and mature consideration in detail;

(iv) the court should not examine the evidence in summary proceedings in such a way as to amount to conducting a trial on the conflicting affidavit evidence.

[14] Although at the interlocutory stage, the likelihood of success or failure in the plaintiff's claim should not be a basis to be considered by the court, it is imperative that the plaintiff's statement of claim must disclose a reasonable cause of action against the defendant. (See: *Abdul Latif Puteh & Ors v. Pentadbir Tanah Jajahan Pasir Mas & Anor* [2023] 1 CLJ 161; [2023] 1 MLJ 330; [2023] 1 MLRA 829).

Whether The Originating Summons Was An Abuse Of The Process Of The Court

[15] According to learned counsel for the plaintiff, the subject matter and issues between the present application and the judicial review proceedings were different, the parties were different and reliefs prayed for were different. Further, the subject of the judicial review proceedings was only in respect of the plaintiff's Glo Centre at the Suria KLCC, Mid Valley Megamall and Sogo shopping complexes. As such, the substance, character and effect of the judicial review proceedings were fundamentally different than that of the present application.

[16] Respectfully, I am unable to agree with the contention of learned counsel for the plaintiff. In my considered view, the pivotal issue and the crux of the plaintiff's complaint was the impugned decision. It was the impugned decision which has set the plaintiff's legal challenge afoot, be it for the judicial review proceedings before the Special Powers Division of the Kuala Lumpur High Court or the present application before this court. It was the impugned decision which led the plaintiff in the present application:

(i) to seek for a declaration that its business was not subject to the jurisdiction of the Ministry of Health;

(ii) to seek for a declaration that is was a legal business concern since its establishment in 2014; and

(iii) to seek for a declaration that to be allowed to continue its business operations.

[17] Perhaps, it would be helpful to delve into the impugned decision. For ease of reference, the contents of the impugned decision are reproduced in *verbatim* (typographical errors deliberately included) in the original language as follows:

> Arahan Pemberhentian Operasi Prosedur Estetik Selaras Dengan Guideline On Aesthetic Medical Practice For Registered Medical Practitioners
>
> Perkara di atas adalah dirujuk.
>
> 2. Seperti yang tuan maklumi, pihak Cawangan Kawalan Amalan Perubatan Swasta (CKAPS), Jabatan Kesihatan Wilayah Persekutuan Kuala Lumpur dan Putrajaya telah menjalankan lawatan pemantauan pada 28 Disember 2022 dan 3 Januari 2023 ke atas premis pihak tuan iaitu Glo Laser Centre KLCC. Mid Valley dan Sogo. Penemuan-penemuan terhadap lawatan tersebut telah dibincangkan di peringat Jabatan berkaitan prosedur-prosedur Non-lnvasive, Minimally Invasive dan Invasive, beserta tafsiran kemudahan jagaan kesihatan swasta selaras dengan ketetapan Seksyen 2, Akta Kemudahan dan Perkhidmatan Jagaan Kesihatan Swasta 1998 [Akta 586].
>
> 3. Merujuk kepada perkara 3.0 dalam Guidelines on Aesthetic Medical Practice for Registered Medical Practitioners Second Edition, tafsiran prosedur invasive, minimally invasive dan non- invasive adalah seperti berikut:
>
> > 3.1 Prosedur Non-lnvasive - This is defined as external applications or treatment procedures that are carried out without creating a break in the skin or penetration of the integument. They target the epidermis only, dan
> >
> > 3.2 Prosedur Minimally Invasive - This is defined as treatment procedures that include minimal damage to the tissues at the point of entry of instruments. These procedures involves penetration or transgression of integument but are limited to the sub-dermis and subcutaneous fat; not extending beyond the superficial musculo-aponeurotic layer of the face and neck, or beyond the superficial fascial layer of the torso and limbs, dan
> >
> > 3.2 Prosedur Invasive - This is defined as treatment procedures that penetrate or break the skin through either perforation, incission or transgression of integument, subcutaneous and/or deeper tissues, often with extensive tissue involvement in both vertical and horizontal planes by various means, such as the use of knife, diathermy, ablative lasers, radiofrequency, ultrasound, cannulae and needles.

4. Berdasarkan perkara-perkara tersebut, Jabatan ini mendapati terdapat rawatan yang dijalankan di premis tuan adalah bersifat non-invasive dan minimally invasive yang hanya boleh dijalankan di fasiliti kesihatan berdaftar dan/atau berlesen dengan Kementerian Kesihatan Malaysia dan dikendalikan oleh pengamal perubatan berdaftar dan berkelayakan. Rawatan-rawatan dimaksudkan adalah seperti berikut:

4.1 Intense Pulse Light

4.2 Chemical peel

4.3 Lasers for treating Skin Pigmentation,

4.4 Laser for Hair Removal.

5. Sehubungan itu, kerjasama pihak tuan dipohon untuk memastikan segala rawatan seperti yang dinyatakan di Para 4 dihentikan secara serta merta. Sekiranya pihak tuan ingin terus menyediakan perkhidmatan laser dan estetik seperti dalam Guidelines on Aesthetic Medical Practice for Registered Medical Practitioner Second Edition yang dikeluarkan oleh Kementerian Kesihatan Malaysia, pihak tuan perlu memastikan premis tersebut didaftarkan sebagai sebuah klinik perubatan swasta dengan estetik sebagai area of interest di bawah Akta Kemudahan dan Jagaan Kesihatan Swasta 1998, dan dikendalikan oleh Pegawai Perubatan yang mempunyai sijil Perakuan Amalan Tahunan/Annual Practicing Certificate (APC) dan Letter of Credentialing and Privileging (LCP).

Sekiranya tuan didapati gagal mematuhi arahan berhenti beroperasi, tindakan penguatkuasaan bawah Bahagian XVI Akta 586 boleh diambil tanpa sebarang peringatan lagi. Perhatian segera dan kerjasama pihak tuan adalah amat dihargai.

Sekian, terima kasih.

"Berkhidmat Untuk Negara"

Saya yang menjalankan amanah,

Sgd.

(Dr Roniyuzam Bin Abd Malek)
MMC: 35284
Timbalan Pengarah Kesihatan Negeri (Perubatan)
Jabatan Kesihatan WP Kuala Lumpur & Putrajaya

s.k. - Pengarah Amalan Peribatan
(u.p: Cawangan Kawalan Amalan Perubatan Swasta)
- Fail.

[18] Pursuant to the impugned decision, the plaintiff was instructed to immediately cease from continuing to provide the beauty treatment services at its centres at the Suria KLCC, Mid Valley Megamall and Sogo shopping complexes unless those centres were registered private medical clinics with aesthetics as the area of interest. Further, the impugned decision required the beauty treatment services offered by the plaintiff to be performed by suitably

qualified medical officers. Most importantly, the impugned decision also forewarned the plaintiff of the legal consequences in respect of enforcement actions under the Private Healthcare Facilities and Services Act 1998 should the plaintiff fail to comply with the impugned decision.

[19] The impugned decision was rendered by the fifth defendant as a public authority. In rendering the impugned decision, the fifth defendant was exercising the powers under the provisions of the Private Healthcare Facilities and Services Act 1998 and the Guidelines on Aesthetic Medical Practice for Registered Medical Practitioner Second Edition issued by the second defendant. This was evident from a reading of the letter of 13 January 2023 issued by the fifth defendant.

[20] The plaintiff in the present application was essentially seeking to challenge the impugned decision as being void and invalid. It was patently evident to me that the plaintiff was in effect seeking for a relief in the nature of a judicial review. This was evident looking at the way the plaintiff fashioned the originating summons. If this court were to allow the plaintiff's application, for all intents and purposes, that would fundamentally mean declaring the impugned decision as void and illegal. That would, unmistakably, be the net result if this court were to accede to the position advanced by the plaintiff.

[21] If the plaintiff were successful in its challenge, then the plaintiff would not be subject to the order to immediately cease its business operations. In that situation, the plaintiff would be able to rely on the approval granted earlier by the seventh defendant to continue providing the beauty treatment services. It must then, as a matter of course, follow that there would not be any further necessity for the plaintiff to get from this court a declaration for it to be allowed to continue its business operations.

[22] It was also clear to my mind that the relief for a declaration that the plaintiff's business was not subject to the jurisdiction of the Ministry of Health was inextricably connected with the impugned decision. In the context of the present application and the circumstances of the case, it was not the kind of declaration which could be applied for nor granted independently of the impugned decision. It could not stand on its own. There would not be any basis for such a declaration to be applied for if not for the impugned decision.

[23] On the premise of these analyses, it was perfectly clear that the substance of the plaintiff's originating summons was indeed a challenge against the impugned decision. Being a decision which was made by the fifth defendant in the performance of a public duty pursuant to the Private Healthcare Facilities and Services Act 1998, it was thus incumbent on the plaintiff to resort to the specific procedures for prerogative writs in the form

of an order of *certiorari* to quash the impugned decision under O. 53 of the Rules of Court 2012 but not by means of the present application. That would be an abuse of the process of the court.

[24] Additionally, the plaintiff in maintaining the present application while the judicial review proceedings before the Special Power Division of the Kuala Lumpur High Court was still pending was clearly maintaining actions in duplicity of one another.

Whether A Civil Action May Be Brought Against A Ministry

[25] Section 16 of the Government Proceedings Act 1956 makes it mandatory for civil proceedings by or against the Government to be instituted or proceeded with in accordance with the Act and not otherwise. Section 21(1) of the same Act provides that civil proceedings by or against the Federal Government shall be instituted by or against the Government of Malaysia.

Sections 16 and 21(1) of the Government Proceedings Act 1956 provide as follows, respectively:

> Civil proceedings in the High Court
>
> 16. Subject to this Act, civil proceedings by or against the Government as are provided by any statutory provision repealed by this Act are hereby abolished, and all civil proceedings by or against the Government in the High Court shall, subject to any other written law for the time being in force, be instituted and proceeded with in accordance with this Act and not otherwise.
>
> Parties to proceedings by and against the Federal Government
>
> 21. (1) Civil proceedings by or against the Federal Government shall be instituted by or against, as the case may be, the Government of Malaysia.

[26] The plaintiff included the second and seventh defendants as parties in the originating summons. The second and seventh defendants are the Ministry of Health and the Ministry of Domestic Trade and Cost of Living, respectively. Learned counsel for the plaintiff seemed to suggest that it was perfectly acceptable to sue the Ministries because this has been similarly done in a number of other cases.

[27] With respect, this conception was highly erroneous. Firstly, just because it was done in other cases before that did not clothe it with any legal justification. Secondly, being Ministries of the Federal Government, they were not legal entities known in law. The relevant Minister charged with the responsibility for the particular Ministry and the officers of the Ministry concerned may be sued but not the Ministry itself. Unlike the Ministers charged with the responsibility for the relevant ministries themselves, the

Ministry has no legal entity of its own. (See: *Vestime Corporation Sdn Bhd v. YBLE Resources Sdn Bhd & Ors* [2006] 2 CLJ 196; [2006] 3 MLJ 554; [2006] 1 MLRH 166; [2006] 3 AMR 151). The position of the law in this regard was long established.

Conclusion

[28] Thus, based on the reasons as aforesaid, this court found that the plaintiff's application was obviously unsustainable. As such, encl. [8] was allowed with RM5,000 cost.